

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CIVIL DIVISION

DEVIN FILIPPELLI, as Personal)	Civil Action No. 9:22-cv-81731
Representative of the ESTATE OF)	
KRYSTAL TALAVERA, on behalf of the)	
Estate and her Survivors,)	
)	
Plaintiff,)	DEFENDANTS' GROW, LLC (d/b/a KD
)	INCORPORATED and THE KRATOM
v.)	DISTRO) and SEAN MICHAEL
)	HARDER'S NOTICE OF
GROW, LLC (d/b/a KD INCORPORATED)	WITHDRAWAL OF ANSWER AND
and THE KRATOM DISTRO); and SEAN)	AFFIRMATIVE DEFENSES AND
MICHAEL HARDER, individually)	CONSENT TO DEFAULT JUDGMENT
)	
Defendants.)	
)	
)	
)	

Defendants, GROW, LLC (hereinafter "Grow") and SEAN MICHAEL HARDER (hereinafter "Harder") (collectively referred to as "Defendants") hereby provide notice of withdrawal of their respective responsive pleadings in this action and consent to a default judgment with damages to be determined by the trier of fact.

In the alternative, Defendants move to withdraw their respective answers and for entry of a default judgment. To the extent a motion is required, Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend a pleading "once as a matter of course within 21 days after serving it" and "[i]n all other cases . . . only with the opposing party's written consent or the court's leave." Under this rule, "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The Court may deny a motion for leave to amend under Fed. R. Civ. P. 15(a)(2) "only when: (1) the amendment would be prejudicial to the opposing party, (2) there has been bad faith or undue delay on the part of the moving party, or (3) the amendment would

be futile.” *Taylor v. Fla. State Fair Autho.*, 875 F. Supp. 812, 84 (M.D. Fla. 1995), citing *Foman v. Davis*, 317 U.S. 178, 182 (1962). “Plaintiffs and defendants have . . . been permitted to amend their pleadings to state additional claims, to assert additional defenses, or to drop claims or defenses.” C. Wright and A. Miller, 6 Federal practice and Procedure: Civil § 1474, at 619-622 (2010) (emphasis added).

Here, Defendants seek to withdraw their responsive pleadings and consent to a default judgment due to lack of financial resources to continue defending themselves in this Action. This Notice/Motion is not an admission of guilt nor an admission of any wrongdoing. Mr. Harder is expressly not waiving any rights he enjoys under the Fifth Amendment and this Notice shall not be construed as an admission of any of the allegations in the operative Complaint.

Dated: March 15, 2023.

/s/ Justin D. Niznik

JUSTIN D. NIZNIK

Florida Bar No. 774901

BOWMAN AND BROOKE LLP

1064 Greenwood Boulevard - Suite 212

Lake Mary, Florida 32746-5419

(407) 585-7600

(407) 585-7610 – Fax

Attorneys for Defendants

GROW, LLC and

SEAN MICHAEL HARDER

Designated email addresses:

justin.niznik@bowmanandbrooke.com

kara.thomas@bowmanandbrooke.com

orfa.diaz@bowmanandbrooke.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2023, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, system, which generates a notice of the filing to all attorneys of record.

/s/ Justin D. Niznik

JUSTIN D. NIZNIK

Florida Bar No. 774901